

American Federation of Labor and Congress of Industrial Organizations



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April 3, 2012

The Honorable Barack Obama
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

In view of your upcoming trip to Cartagena, Colombia to participate in the summit for the Organization of American States, I write regarding Government of Colombia's failure to fully comply with its commitments under the Colombian Action Plan Related to Labor Rights (Labor Action Plan).

As you know, the AFL-CIO argued when the Labor Action Plan was announced nearly a year ago, despite being a clear step in the right direction, the Labor Action Plan was inadequate to the task at hand. Among other shortcomings, it failed to require a halt to the violent repression of labor and other human rights activists and did not include **sustained** and **measurable** benchmarks that would ensure that Colombian workers could exercise fundamental rights such as free association, collective bargaining, and free expression.

Nevertheless, the AFL-CIO has supported your Administration's efforts to hold the Government of Colombia accountable for the commitments it made in the Labor Action Plan. Those commitments have not yet been fulfilled, which is why I think any determination that Colombia has "successfully implemented key elements of the Labor Action Plan" is premature. Premature certification would undermine the efforts the Colombian government has made thus far and prevent further progress. Decisions on the lives and livelihoods of workers should be driven by concrete action and the desire for improved prospects for the future, rather than simply timed to accompany scheduled meetings among leaders.

Unfortunately, the Labor Action Plan included no objectives to reduce threats or attacks on labor leaders or other types of human rights defenders.

Thus, it is not surprising that threats, assaults, and murders of labor and other human rights defenders have not abated. According to the *Escuela Nacional Sindical* (ENS), 29 unionists were killed in 2011, and another 4 already in 2012. According to *Somos Defensores* (We Are Defenders), 49 human rights defenders were killed in 2011, a significant increase over 2010, when the total was 32. It is important to note that only two murders appear on both lists. Fewer murders of one specific type of activist are nothing to celebrate when they are accompanied by increased murders against other activists. The overall numbers do not indicate clear progress toward rule of law or growing respect for freedom of expression for workers or activists.

Despite the Colombian government's commitment "to finance new and increased activities for reducing impunity in general" in Section IX of the Labor Action Plan, successful prosecutions remain rare. Less than 10 percent of the nearly 3,000 cases of trade unionists murdered since 1986 have reached a conviction, according to Human Rights Watch. The few cases that have identified some level of intellectual authors have generally come within the peace and justice process, where admitted perpetrators receive reduced sentences, the maximum being eight years (with time served counted toward the total). In other words, the powers behind the crimes remain almost completely free from punishment. None of the 29 labor activists killed in 2011 had their cases resolved by a successful prosecution.

Effective preventive inspections remain elusive despite a commitment to devote added resources to this function. Section I of the Labor Action Plan required the Government of Colombia to hire and train 100 labor inspectors by December 15, 2011 and to hire another 100 during 2012. Pursuant to Section III of the Labor Action Plan, half of these 200 new inspectors would specialize in cooperatives. Also pursuant to Section III, the Government of Colombia would establish five "priority sectors" (palm oil, sugar, mines, ports, and flowers) and would begin and continue preventive inspection in these sectors as of April 2011. However, workers report that the few inspections that have occurred have been superficial and failed to adequately address the critical issue of employers' illegal use of cooperatives and other forms of labor intermediation. Even more importantly, it is difficult to conclude that the inspections that have been performed could have effectively enforced current law: the AFL-CIO understands that a new inspection manual, based on the new laws and policies, is being developed, but has not yet been issued. In addition, the AFL-CIO understands that, as of March 15, 2012, no inspectors had been trained to conduct inspections under the new laws.

The use of cooperatives and other forms of subcontracting that deny workers the right to organize remain common. In Section III of the Labor Action Plan, the Government of Colombia committed to issuing regulations implementing the 2010 cooperatives law (Article 63) and to setting forth “clear and sufficiently broad definitions of ‘permanent core function’ and ‘intermediation’ to adequately address abuses.” However, Decree 2025, which was issued pursuant to Section III, was insufficient to the task, leaving myriad forms of subcontracting unregulated. For example, some workers report that employers have forced them from cooperatives into other structures, such as *sociedades por acciones simplificadas* (“SASs”), and that the Ministry of Labor has not protected them from such shell games. Employers and even some in the Ministry of Labor justify this by arguing that such third-party subcontractors are not “labor intermediation,” and therefore not prohibited under Decree 2025. The Ministry’s added failure to address whether or not an employer is illegally contracting out its “permanent core functions” only widens the loophole, leaving workers in much the same position as they were before the Labor Action Plan, unable to organize and unable to seek effective redress from the Government.

Examples of Incomplete Implementation of the Labor Action Plan:

- **Palm Plantations in Puerto Wilches:** Of ten employing plantations that workers report use cooperatives illegally, only one has been fined. However, that plantation has not yet made any changes as a result (for example, with respect to moving workers out of cooperatives and into direct employment). Furthermore, despite the imposition of the fine, the Ministry of Labor has failed to define which job functions at this plantation (or any other) are “core” functions—a failure which impedes implementation of the Cooperatives prong of the Labor Action Plan. Frustrated, coop workers on the plantation in question conducted a two-day work stoppage last week, seeking proper application of Decree 2025. The Ministry of Labor did not respond, and the workers continue to be employed through illegal cooperatives.
- **Telefonica:** There is no evidence that either the Ministry of Labor or Telefonica has developed any criteria regarding its “permanent core functions” or attempted to require Telefonica to move employees from indirect to direct employment relationships to comply with the provisions and intentions of Section III of Labor Action Plan with respect to the use of “cooperatives and any other kind relationship that affects labor rights.”
- **Municipal Workers in Jamundí:** In January 2012, the municipal workers in Jamundi began an organizing effort. Rather than respect their right to organize, the City fired 43 workers, and two leaders of the new union received numerous threats. One activist of the new union, Miguel Mallana, was gunned down in the

street on March 25th.¹ While no specific prong of the Labor Action Plan addressed the right of workers to engage in concerted activity without employer retaliation, such protection is critical and fundamental to the Colombian Government's commitment in the very first sentence of the Labor Action Plan: "to protect internationally recognized labor rights."

- **Port Workers in Turbo:** In February 2012, 450 port workers in Turbo joined the national port workers union, the UP. Within a week, 50 of the leaders of the port workers were effectively fired (because all the port workers in Turbo are sub-contracted through cooperatives, they were technically "barred from working"). When the workers met with the local Ministry of Labor authorities to report the reprisals taken against them, the local official told them, "that's your problem, not mine," an inappropriate response to complaints from workers in a Labor Action Plan "priority" sector (ports). As with the municipal workers fired above, this failure to respond is inconsistent with the workers' internationally recognized right to organize, and an example of the Government of Colombia's inconsistent approach to the commitments it made under the Labor Action Plan.

It is premature to declare the Labor Action Plan a success. Now is not the time to relieve the pressure on Colombia to uphold the commitments it made in the Labor Action Plan. Colombia has already been rewarded by the U.S. Government with the completion and enactment of the US-Colombia Free Trade Agreement. Moving too quickly toward implementation could jeopardize future improvements for Colombian workers, undercutting efforts to secure labor and other human rights and harming the workers of both countries.

Sincerely,


Richard L. Trumka

¹ ENS has not yet added this incident to its official list for 2012.